BOTTS, TRUSTEE IN BANKRUPTCY, v. HAMMOND.—Decided at Richmond, February 6, 1900. *Simonton*, Circuit Judge.

BANKRUPTCY—*Proceedings in State court—Final judgment and distribution before petition in bankruptcy.* Where a State court in attachment proceedings has legally and properly taken hold of the property of an insolvent and divided the proceeds thereof among all of the creditors, equally and ratably, all but two of them consenting and releasing the debtor, all of which was consummated before the involuntary feature of the Bankrupt Act went into effect, the dissenting creditors cannot by proceedings in bankruptcy have annulled the action of the State court. Subdivision F of Section 67 does not apply where the lien by proceedings in the State court has been merged into a judgment, the property sold under the lawful orders of a court of competent jurisdiction, the money distributed and the lien gone. There being nothing in the record to show that any fraud on the Bankrupt Act was intended and an equal distribution of he debtor's estate having been made among all of his creditors without preference or priority, the scope and purpose of the Bankrupt Act has been accomplished. The petitioning creditors have lost all claim on the process of the bankrupt court by their delay, after full notice, in taking any steps until the money was distributed and the other creditors had committed themselves and discharged the debtor.

PICKENS TOWNSHIP v. POST.—Decided at Richmond, February 6, 1900. *Simonton*, Circuit Judge.

COUNTY BONDS—*Certificate on face of bond that conditions precedent have been performed—Bona fide holder.* In a suit by a *bona fide* holder before maturity for value and without notice brought on county bonds issued in aid of the construction of a railroad, the county is estopped by the certificate of the proper officers, appearing on the face of the bond, to the effect that all the conditions precedent to the issuing of such bonds have been fully performed, from setting up any irregularities of the proceedings antecedent to the preparation, execution and issuance of the bonds. But the fact that the act of the legislature authorizing the issue of such bonds is unconstitutional is a valid defence even against a *bona fide* holder for value.

COUNTY BONDS—*Negotiable paper—Bona fide holder—Presumptions—Rights of transferee.* The holder of negotiable paper is presumed to have taken it before maturity, for valuable consideration and without notice of any objection to which it was liable, and this presumption stands until overcome by sufficient proof. To impeach his title by proof of any facts and circumstances outside of the instrument itself, it must first be shown that he had notice of such facts at the time the purchase was made. Such a holder is not affected by anything which has occured between other parties unless he had knowledge thereof at the time of the purchase, and he is entitled to transfer all his rights unimpaired to a third person, although such transferee be acquainted with defences against the paper. Negotiable bonds delivered in escrow and wrongfully put in circulation are valid in the hands of a *bona fide* holder for value and without notice. Nor is such a holder affected with constructive notice of a suit respecting such paper.

FEDERAL PRACTICE—*Construction of State Constitution by State court—Different construction by Federal court—Bona fide holder of negotiable paper.* Where a *bona fide* holder for value purchased negotiable county bonds at a time when there was no

decision against the constitutionality of the act under which such bonds were issued, the Federal court in deciding the validity of the bonds must determine the question according to its own view of the constitutionality of the State law, though this may lead them to hold as constitutional a law of the State declared to be unconstitutional by the highest court of the State in a decision rendered subsequent to the purchase of the bonds by the holder.

NEGOTIABLE PAPER—*Bona fide holder—Notice—Unpaid coupons.* The fact that there were unpaid coupons attached to negotiable bonds at the time of purchase does not necessarily affect the purchaser with notice of equities. Failure to pay interest alone is not sufficient in law to throw discredit upon negotiable paper, upon which it is due, to subject the holder, to the full extent of his security, to antecedent equities.

ELK FORK OIL AND GAS CO. v. FOSTER.—Decided at Richmond, February 6, 1900. *Simonton*, Circuit Judge.

RECEIVERS—*Appointment by court suo motu—Notice of motion to appoint.* Where claimants to mining property, the title to which is in dispute, each ask for injunctions against the other and both concur in the necessity of operating the property, the appointment of a receiver by the court on its own motion is not error, though there be no prayer for a receiver in the original or the cross bill, and no notice of a motion to have a receiver appointed be given, and neither party ask for a receiver. Where the nature of the case or the preservation of the property requires it, the appointment of a receiver is a necessary incident to the power of the court. In this case, neither party asking for or desiring the appointment of a receiver, and the appointment being made by the court *suo motu*, notice of a motion to have a receiver appointed was not only unnecessary, but impossible.

RECEIVERS—*Compensation—Allowance for counsel fees.* When it becomes the duty of a court of equity to take property under its own charge through a receiver, the property becomes chargeable with the necessary expenses incurred in its care, including the allowance to the receiver for his services. It is in the power of courts of equity to fix the compensation of their own receivers, and this power is largely discretionary; their action in this particular is presumptively correct and, in the absence of legislation fixing the compensation of receivers, will not be interfered with unless extravagant. When necessary, a receiver may employ counsel, and fees to such counsel are within the just allowances that may be made by the court.

RECEIVERS—*Repayment of advances to receiver made by party during receivership.* By a decree in the case at bar it was provided that if either or both of the parties should make advances to the receiver to enable him to operate a portion of the property in his hands, they were to be repaid such advancements out of the production of the property in the receiver's hands. Under this order of court both the parties made such advancements which were used by the receiver. At the final hearing the lower court directed that the amount of advances made by the losing party be repaid him out of the funds of the receiver. *Held:* That good faith demanded that the promise of the court be fulfilled, and there was no error in the action of the lower court in that respect.